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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,824	02/20/2004	Jeffrey M. Maher	15866/142	7051
23595	7590	10/03/2005	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			KRAMER, DEVON C	
			ART UNIT	PAPER NUMBER
			3683	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*re*

**Office Action Summary**

Application No.

10/783,824

Applicant(s)

MAHER, JEFFREY M.

Examiner

Devon C. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1,15 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-14,16-19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/16/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

- 1) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 2) Claims 2-14, 16-19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 claims, "a wedge axial mover in motion isolated contact with the wedge for moving the wedge in both directions along the first axis." Please note that the term motion isolated contact is unclear to the examiner. Clearly, the movement of the piston in the instant application causes motion of the wedge, this motion is not isolated from the motion of the piston.

### ***Claim Rejections - 35 USC § 102***

- 3) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 4) Claims 2-14, 16-19 and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by Zimmer (DE 10207605).

In re claims 16, Zimmer provides an apparatus comprising: a wedge (93) moveable along a first axis, with the wedge having a wedge surface arranged

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nonparallel to the first axis; an actuator (96) moveable along a second axis perpendicular to the first axis, with the actuator having an engaging surface that engages with a roller (107), with the actuator having a friction creating portion (104), with movement of the actuator along the second axis being dependent on movement of the wedge along the first axis; and a wedge axial mover (53) in contact with the wedge for moving the wedge along the first axis, with the wedge axial mover in motion isolated contact to prevent motion transfer from the wedge to the wedge axial mover nonparallel to the first axis. See rejection of claim 8 below for further limitations of claim 15.

In re claims 2 and 21, Zimmer provides the wedge axial mover with a first chamber (54 or 56) and a first piston (53).

IN re claim 3, Zimmer provides a stem guide (28) and a stem (92). Please note that the stem becomes the wedge portion a distance away from the piston.

IN re claim 4, Zimmer provides a second chamber (76, 86) and a second piston (71, 64, 81).

In re claim 5, the second piston having a disk shape and a portion contacting the wedge.

IN re claim 6, see figure 3.

In re claim 7, see 52.

In re claims 8-10, 13 and 17-18, see element 91, figure 3.

In re claim 11 and 19, see elements 107, 106.

In re claim 12, see elements 95.

IN re claim 14, see element 104.

5) Claims 2, 7, 14, 16-17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmer (WO 98/05470).

In re claims 1, 15 and 20, Zimmer provides an apparatus comprising: a wedge (5) moveable along a first axis, with the wedge having a wedge surface arranged nonparallel to the first axis; an actuator (17) moveable along a second axis perpendicular to the first axis, with the actuator having an engaging surface that engages with a roller (6.1), with the actuator having a friction creating portion (3), with movement of the actuator along the second axis being dependent on movement of the wedge along the first axis; and a wedge axial mover (4) in contact with the wedge for moving the wedge along the first axis, with the wedge axial mover in motion isolated contact to prevent motion transfer from the wedge to the wedge axial mover nonparallel to the first axis and an adjustable guide (21).

In re claims 2 and 21, see figure 5.

In re claim 7, see element 8.

In re claim 14, see figure 5.

IN re claims 16-17, see figure 5.

In re claim 19, see elements 6.1 and 6.2.

### ***Response to Arguments***

6) Applicant's arguments filed 7/21/05 have been fully considered but they are not persuasive. Applicant argues that the dog of Zimmer is not in motion isolated contact with the piston. Please not the 112 rejection above, clearly the devices of Zimmer act in

a similar manner to that of the instant application. Applicant's term "motion isolated contact is unclear" because in both the instant application and the Zimmer references, motion of the piston causes motion of the wedge. Further, the references both recite that the cap member is adjusting in the Zimmer references.

### ***Conclusion***

**7) THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

**8)** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C. Kramer whose telephone number is 571-272-7118. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Devon C Kramer  
Examiner  
Art Unit 3683

DK

*Robert A. Sicchola* 9/28/06  
ROBERT A. SICCHOLA  
PATENT EXAMINER